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REMARKS

1. Claim Amendments

Claim 36 has been amended to further include a reduction in allergenicity. Support for this amendment can be found throughout the Specification and, in particular, on page 26, line 4 and page 19, line 13. No new matter is added by way of this amendment.

2. Rejection of Claim 36 under 35 U.S.C Section 112, Second Paragraph

The Examiner has rejected Claim 36 as being indefinite for failing to particularly point out and distinctly claim the invention. The Examiner asks what "reducing" food intolerance means. Applicant asserts that the word is self-evident as to its definition and Applicant respectfully requests the Examiner give better clarity on this rejection if its usage to indicate that treatment of food with zingibain reduces food intolerance is not clear. In light of the common usage of the term, "reducing", Applicant respectfully requests that Examiner remove this rejection.

3. Rejection of Claims 35-38 under 35 U.S.C. Section 102(b)

The Examiner has rejected the claims under 35 U.S.C. Section 102(b) as allegedly being anticipated by the website "What is Ginger." The only legitimate basis for this rejection appears to be under the rules of inherency, since all other Section 102 rejections requires that the Examiner show that each and every one of the claim limitations was suggested or taught by the prior art being relied upon, irrespective of where the limitations are found. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re*

Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). In the present instance, the Examiner has admitted that not all claim limitations are found on the "What is Ginger" web-site and, therefore, the Examiner appears to rely on inherency as a basis for this rejection.

It appears to be the Examiner's argument that the, "What is Ginger" web-site teaches the use of ginger to flavor food, and that because ginger contains zingibain, the use of ginger in food as a flavor additive would have inherently reduced food tolerance.

Under MPEP 2112 in order to establish inherency, "the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." In *re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)

Applicant asserts that there is insufficient evidence on the, "What Is Ginger" website to support the Examiner's rejection. First, the invention at hand is the use of zingibain, not ginger. Even though ginger contains zingibain, it contains a great many other things, so there is no way anyone can conclude from the long list of possible uses of ginger listed at that website that ANY of them are mediated by zingibain. Furthermore, the reference at hand does not teach or describe giving ginger to people with food intolerance despite a long list of possible uses of ginger. Therefore, there is no extrinsic evidence in this reference or the Examiner's rejection that makes it clear that one of ordinary skill in the art at the time of the citation would have recognized the use of zingibain or ginger containing zingibain to treat food intolerance.

Therefore, Applicant asserts the rejection is improper, and Applicant respectfully requests that the rejection be removed and the claims be placed in a condition for allowance.

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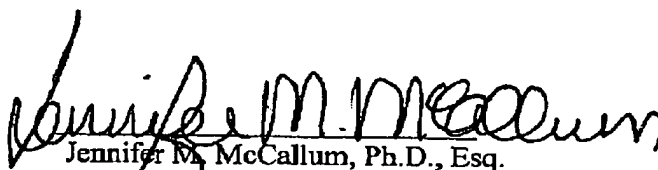
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Concluding Remarks

If the Examiner notes any further matters which would be expedited by a telephonic interview, she is requested to contact Dr. Jennifer M. McCallum at the telephone number listed below.

It is believed that no additional fees are due for the application; however, if this is incorrect, the Director is authorized to charge any deficiency or overpayment to Deposit Account No. 502679.

Respectfully submitted,

8-14-08
Date
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